

GABRIELA KIPNIS (CA Bar No. 284965)  
NATALIE S. CHA (CA Bar No. 327869)  
**CONRAD | METLITZKY | KANE LLP**  
217 Leidesdorff Street  
San Francisco, CA 94111  
Tel: (415) 343-7100  
Email: [gkipnis@conmetkane.com](mailto:gkipnis@conmetkane.com)  
Email: [ncha@conmetkane.com](mailto:ncha@conmetkane.com)

JOSEPH M. TERRY (*pro hac vice*)  
JESSE T. SMALLWOOD (*pro hac vice*)  
JOHN M. McNICHOLS (*pro hac vice*)  
**WILLIAMS & CONNOLLY LLP**  
680 Maine Ave. SW  
Washington, DC 20024  
Tel: (202) 434-5000  
Fax: (202) 434-5029  
Email: [jterry@wc.com](mailto:jterry@wc.com)  
Email: [jsmallwood@wc.com](mailto:jsmallwood@wc.com)  
Email: [jmenichols@wc.com](mailto:jmenichols@wc.com)

Attorneys for Defendants  
COINBASE GLOBAL, INC.,  
COINBASE INC., AND COINBASE  
BERMUDA SERVICES LIMITED

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

BRIAN CAROLUS, individually and on behalf  
of all others similarly situated,

Case No. 3:25-CV-03089-CRB

Plaintiff,

V.

COINBASE GLOBAL, INC., COINBASE INC., AND COINBASE BERMUDA SERVICES LIMITED

## Defendants.

**DEFENDANTS COINBASE, GLOBAL,  
INC., COINBASE, INC., AND COINBASE  
BERMUDA SERVICES, LTD.'S  
REPLY IN SUPPORT OF MOTION TO  
COMPEL ARBITRATION AND STAY  
PROCEEDINGS**

Date: September 19, 2025  
Time: 10:00 a.m.  
Judge: Hon. Charles R. Breyer  
Location: Remotely via videoconference

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1 **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

2 Plaintiff does not dispute that: (1) he executed the Coinbase User Agreement; (2) the User  
 3 Agreement contains an arbitration clause with a clear and unmistakable delegation provision; and (3) the  
 4 Ninth Circuit, in *Bielski v. Coinbase, Inc.*, 87 F.4th 1003 (9th Cir. 2023), upheld the enforceability of the  
 5 delegation provision in the User Agreement. Plaintiff nonetheless contends that changes to the User  
 6 Agreement that post-date the version at issue in *Bielski*, as well as the Ninth Circuit’s recent decision in  
 7 *Heckman v. Live Nation Entertainment, Inc.*, 120 F.4th 670 (9th Cir. 2024), allow him to escape *Bielski*’s  
 8 ruling. Plaintiff is wrong in both respects.

9 *First*, Plaintiff argues that, under the Ninth Circuit’s recent decision in *Heckman*, the User  
 10 Agreement’s “batch” arbitration provision, which addresses situations (not present here) where 100 or  
 11 more claims are brought by the same counsel, eliminates the preemptive effect of the Federal Arbitration  
 12 Act (“FAA”). Absent the FAA’s protective cloak, Plaintiff says, the User Agreement is unconscionable  
 13 under the California Supreme Court’s decision in *Discover Bank v. Superior Court*, 36 Cal.4th 148 (2005)  
 14 because of its class-action waiver provision. Not so. *Heckman* is worlds apart from this case. And even  
 15 if *Heckman* did control, the User Agreement’s class action waiver would survive under *Discover Bank*.

16 *Heckman* held that the FAA protects only “individual” and “bilateral” arbitration, not “class-wide”  
 17 arbitration. 120 F.4th at 689–90. Because the mass arbitration protocol in *Heckman* resolved claims “in  
 18 a ‘class or representative’ fashion,” it was “not arbitration envisioned by the FAA,” and it lost the FAA’s  
 19 protection. *Id.* at 683, 690. Coinbase’s batch arbitration provision, in contrast, fully preserves the right  
 20 to individual and bilateral adjudication because—among other reasons—it lacks a “representative  
 21 feature,” where “an individual brings claims *on behalf of* others.” *Jones v. Starz Enters., LLC*, 129 F.4th  
 22 1176, 1182 (9th Cir. 2025). This “critical element” of non-FAA-protected class-action arbitration is  
 23 absent here. *Id.* Plaintiff ignores entirely the Ninth Circuit’s recent decision in *Jones*, in which the court  
 24 distinguished the mass arbitration provision in *Heckman* from a provision that merely consolidated  
 25 individual claims, as provided for by the User Agreement. *Heckman* is therefore inapposite, and the batch  
 26 arbitration protocol here does not lose FAA protection.

27 Even if it were not preempted, *Discover Bank* would not render the User Agreement’s class-action  
 28 waiver unconscionable. *Discover Bank* is rooted in the principle that class actions are often “the only

1 effective way” to redress small-dollar claims. 36 Cal.4th at 161 (citation omitted). Its holding is limited  
 2 to situations where: “[1] small damage disputes could predictably arise between the parties, and when [2]  
 3 the ‘party with the superior bargaining power’ is alleged to have ‘carried out a scheme to deliberately  
 4 cheat large numbers of consumers out of individually small sums of money.” *Heckman*, 120 F.4th at 690  
 5 (quoting *Discover Bank*, 36 Cal.4th at 162–63). Neither of these circumstances is present here. Plaintiff  
 6 has not alleged a “scheme” by Coinbase, much less one aimed at nickeling and diming consumers out of  
 7 small sums of money. Nor has Plaintiff shown that his claims (which seek over \$100,000 in damages)  
 8 would predictability involve “small damage disputes.”

9       Second, Plaintiff argues that even if *Heckman* and *Discover Bank* do not control, the batch-  
 10 arbitration and attorney’s fees provisions render the delegation provision substantively unconscionable.  
 11 This argument also fails. Plaintiff fails to show how these provisions render the *delegation clause*  
 12 unconscionable, as the Ninth Circuit requires when challenging a delegation clause based upon other  
 13 provisions in the agreement. *Holley-Gallegly v. TA Operating, LLC*, 74 F.4th 997, 1002 (9th Cir. 2023).  
 14 In any event, there is nothing unconscionable about the User Agreement’s batch arbitration provision, as  
 15 it preserves Plaintiff’s right to bilateral adjudication of his claims and is neither unfair nor one-sided in  
 16 Coinbase’s favor. Further, the attorney’s fee provision Plaintiff challenges is of the kind California courts  
 17 routinely enforce in arbitration agreements. In short, nothing in these provisions disturbs *Bielski*’s finding  
 18 that the User Agreement’s delegation provision is enforceable. Accordingly, Plaintiff’s claims must be  
 19 submitted to arbitration.

## 20 II. ARGUMENT

### 21       A. The User Agreement’s Class Action Waiver Is Valid and Enforceable

22       Seeking to avoid his agreement to arbitrate, Plaintiff asserts that under *Heckman*, the User  
 23 Agreement’s batch arbitration provision eliminates FAA preemption and that the *Discover Bank* rule voids  
 24 the class waiver. Plaintiff is incorrect on both fronts. Neither *Heckman* nor *Discover Bank* applies here.

### 25       1. *Heckman* Is Inapposite Because It Addressed a Materially Different 26 Arbitration Clause, and the *Discover Bank* Rule Remains Preempted

27       Plaintiff’s principal contention is that the User Agreement’s class waiver is unconscionable under  
 28 the California Supreme Court’s decision in *Discover Bank v. Superior Court*, 36 Cal.4th 148 (2005) (Opp.

1 4). Binding U.S. Supreme Court precedent holds otherwise. In *AT&T Mobility LLC v. Concepcion*, 563  
 2 U.S. 333, 352 (2011), the Court held that the FAA preempts any application of *Discover Bank* that poses  
 3 an “obstacle” to the objectives of the FAA. Applying *Concepcion*, a court in this district rejected an  
 4 argument substantially similar to Plaintiff’s that the Coinbase User Agreement’s arbitration provision is  
 5 “substantively unconscionable because it prohibits class-wide claims.” *Alfia v. Coinbase Global, Inc.*,  
 6 2022 WL 3205036, at \*4 (N.D. Cal. July 22, 2022).

7 As the Court explained in *Concepcion*, the FAA’s purpose is to “ensur[e] that private arbitration  
 8 agreements are enforced according to their terms.” 563 U.S. at 344 (citation omitted). To that end, the  
 9 FAA affords parties “discretion in designing arbitration processes … to allow for efficient, streamlined  
 10 procedures tailored to the type of dispute.” *Id.* The Court has elsewhere noted that the FAA does not  
 11 require uniformity in arbitration agreements: nothing in “the FAA prevents the enforcement of agreements  
 12 to arbitrate under different rules than those set forth in the Act itself.” *Mastrobuono v. Shearson Lehman*  
 13 *Hutton, Inc.*, 514 U.S. 52, 57 (1995) (citation omitted). Consistent with that guidance, the AAA’s  
 14 Supplementary Rules for Mass Arbitration note that “[p]arties are encouraged to agree to additional  
 15 processes that make the resolution of their Mass Arbitration more efficient.” Pl. Ex. B at 3. The User  
 16 Agreement’s batch provision, which is designed to streamline arbitration procedures and create  
 17 efficiencies in the handling of multiple claims, is therefore an exercise of discretion protected by the FAA.

18 Plaintiff’s argument to the contrary, relying on *Heckman*, is unavailing. As an initial matter, the  
 19 batch arbitration provision does not apply to Plaintiff’s claims at all, given that Plaintiff, as the sole  
 20 claimant, is well short of the 100 claims needed to trigger the batch provision. He will therefore arbitrate  
 21 his claims individually in exactly the kind of “bilateral arbitration” he concedes the FAA governs.

22 More fundamentally, *Heckman* is not controlling because the mass arbitration provision in  
 23 *Heckman* is materially different from the batch arbitration provision here. The arbitration agreement in  
 24 *Heckman* provided for a “mass arbitration” protocol administered by “a newly created entity,” which  
 25 employed “novel and unusual procedures.” 120 F.4th at 676. Under that protocol, any time five or more  
 26 cases shared common issues of law or fact, those issues would be decided in three “bellwether” cases, in  
 27 which only three claimants participated, confidentially. *Id.* at 678. Decisions on common issues in the  
 28 bellwether cases were fully binding in other cases, even on non-bellwether claimants who had neither

1 knowledge of the proceedings nor the opportunity to participate. *Id.* at 678–79. Thus, batched claims  
 2 were “not resolved by individual arbitration” and instead were “treated in a ‘class or representative’  
 3 fashion.” *Id.* at 683. This protocol brought about “an entirely new form of dispute resolution *intentionally*  
 4 *designed* to avoid individual, bilateral adjudication of claims—exactly the attributes of arbitration the  
 5 Supreme Court in *Concepcion* recognized that the FAA protects.”<sup>1</sup> *Id.* at 683 (Vandyke, J., concurring).  
 6 Thus, *Concepcion* did not apply, and the application of California law to the *Heckman* arbitration  
 7 agreement was “not preempted by the FAA.” *Id.* at 690.<sup>2</sup>

8 The batch provision in the User Agreement is nothing like the unique mass arbitration protocol in  
 9 *Heckman*. Instead, it resembles the kind of “bilateral” and “individualized” form of arbitration that is  
 10 “protected from undue state interference by the FAA.” *Id.* at 689–90 (citation omitted). Indeed, the User  
 11 Agreement’s batch provision does not function like a class action at all. Although it consolidates cases  
 12 with substantially similar facts and the same counsel for the sake of efficiency, in no way does it adjudicate  
 13 claims on a representative basis or limit each claimant’s right to participate fully in the resolution of his  
 14 case on its own merits and as the claimant directs. Decl. of J. Nacoste, ECF 33-1, Ex. 5, App’x 5, § 1.8.

15 In this vein, the User Agreement adopts the AAA Mass Arbitration Supplementary Rules, which  
 16 *Heckman* observed “differ significantly” from the rules applicable in that case. 120 F.4th at 678. By their  
 17 terms, the AAA Rules “are intended to provide parties and their representatives with an efficient and  
 18 economical path toward resolution of multiple *individual* disputes.” Pl. Ex. B at 3 (emphasis added). The  
 19 AAA will administer the individual arbitrations in batches of 100, with a single arbitrator presiding over  
 20 the consolidated individual cases and a single set of filing and administrative fees due per side per batch.

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22 <sup>1</sup> The mass arbitration provision in *Heckman* was problematic in numerous other respects not  
 23 present here. Among other things, the Ninth Circuit noted that the *Heckman* agreement’s terms were  
 24 “affirmatively misleading” and that a user became bound by new terms merely by “browsing [the]  
 25 website,” without any opportunity to decline. 120 F.4th at 682–83. The rules of the chosen arbitral forum,  
 26 moreover, were “so dense, convoluted and internally contradictory to be borderline unintelligible.” *Id.* at  
 27 683. In addition, those rules featured “no right to discovery,” briefing restrictions that “border[ed] on the  
 28 absurd,” and asymmetrical rights of appeal that rendered the rules “inadequate vehicles for the vindication  
 of plaintiffs’ claims.” *Id.* at 685. Plaintiff here does not (and could not) contend that User Agreement’s  
 batch arbitration provision or the AAA rules share these problematic features.

<sup>2</sup> Coinbase respectfully submits that *Heckman* is wrongly decided, as its reasoning is foreclosed  
 by *Concepcion*, among other United States Supreme Court decisions. Indeed, *Concepcion* expressly noted  
 that parties can agree to class litigation in arbitration, and the FAA requires that such agreements be  
 enforced. *See* 563 U.S. at 351.

1 *Id.* at MA-1(c). If a claimant disagrees that his claims are “substantially similar” to other claims in the  
 2 batch, AAA will appoint a separate arbitrator to consider that issue, at Coinbase’s sole expense. Nacoste  
 3 Decl. Ex. 5 App’x 5, § 1.8. Unlike *Heckman*, there are no bellwethers, no limitations on individual  
 4 participation, and no binding of claimants by rulings in other cases. *See id.* *Heckman*’s exception to the  
 5 general rule that *Discover Bank* is preempted by the FAA, therefore, simply does not apply here.

6 The Ninth Circuit’s recent decision in *Jones v. Starz Entertainment, LLC*, 129 F.4th 1176 (9th Cir.  
 7 2025), confirms this conclusion. There, the court explained the distinction between “representative  
 8 arbitration,” as present in *Heckman*, and mere “consolidation” of individual claims, as contemplated by  
 9 the User Agreement. *Id.* at 1182. The “critical difference” between the two, the court said, is that

10 [i]n a class or representative arbitration, an individual brings claims *on behalf of* others,  
 11 whereas a claimant in a consolidated arbitration brings the claims in her *individual*  
 12 capacity. It is that representative feature, not the mere numerosity of parties, that forms  
 13 the critical element of the fundamental changes brought about by the shift from bilateral  
 arbitration to class-action arbitration.

14 *Id.* (emphasis in original) (citation omitted). The court drew a direct contrast between the “novel  
 15 arbitration procedures” at issue in *Heckman* and the mass arbitration procedures in the governing Judicial  
 16 Arbitration and Mediation Services (JAMS) rules, which—like the AAA rules adopted by the User  
 17 Agreement—permitted consolidation of individual arbitration demands sharing common issues of law or  
 18 fact. 129 F.4th at 1182–83. In particular, the *Heckman* protocol’s use of bellwether cases and the resulting  
 19 deprivation of due process for claimants in other cases were “red flags associated with classwide  
 20 arbitration” that the court observed were absent from the JAMS rules. *Id.*

21 Plaintiff tellingly omits any discussion of *Jones*, and instead seeks to blur the distinction between  
 22 the Coinbase batch arbitration provision and the *Heckman* provision by mischaracterizing both the User  
 23 Agreement’s terms and the AAA Mass Arbitration Supplementary Rules. Pointing to multiple rules in  
 24 the MA-6 series, Plaintiff erroneously asserts that they “establish a system of precedent, where earlier  
 25 rulings are binding on absent parties.” (Opp. 2; *see also* Opp. 5.) Plaintiff further contends that “[f]uture  
 26 claimants are funneled into consolidated proceedings and subject to the outcome of earlier arbitrations  
 27 about which they had no notice, no opportunity to participate, and no meaningful ability to contest the  
 28 results.” (Opp. 2–3; *see also* Opp. 5.) These rules do nothing of the sort. Instead, MA-6(c) simply grants

1 a “Process Arbitrator” the authority to make purely administrative determinations to streamline individual  
 2 but similar claims brought by the same or coordinated counsel. Pl. Ex. B at MA-6(c)(ix); *see also* MA  
 3 (Introduction). Critically, “[t]he Process Arbitrator *must allow* the parties in these subsequently filed cases  
 4 the opportunity to address the applicability of any rulings to these cases before making any final  
 5 determination.” *Id.* at MA-6(c)(ix) (emphasis added). Thus, while Plaintiff makes much of the provision  
 6 granting the process arbitrator the authority to rule on “[w]hether any previously issued rulings … are  
 7 binding on the subsequent cases,” *id.* at MA-6(c)(x) (Opp. 5, 12), that provision simply provides a  
 8 procedure for the arbitrator to address any arguments raised by the parties as to this issue. It does not bind  
 9 future claimants, and instead provides claimants the opportunity to meaningfully contest the results of any  
 10 of the process arbitrator’s rulings. This is the exact opposite of the process at issue in *Heckman*.

11       **2. Even if the *Discover Bank* Rule Were Not Preempted, The User Agreement’s**  
 12       **Class Waiver Provision Would Not Be Unconscionable**

13       The rule in *Discover Bank* would not apply here even if it were not preempted. The court in  
 14 *Discover Bank* noted that “at least *some* class action waivers in consumer contracts are unconscionable  
 15 under California law,” but made clear that it did “*not* hold that *all* class action waivers are necessarily  
 16 unconscionable.” 36 Cal.4th at 160, 162 (emphasis added). Undergirding the court’s holding was the  
 17 idea that class actions are “often the only effective way” to redress small dollar claims. *Id.* at 161. Properly  
 18 understood, therefore, the ruling in *Discover Bank* that some class waivers may be unenforceable is limited  
 19 to specific cases “when [1] small damage disputes could predictably arise between the parties, and when  
 20 [2] the ‘party with the superior bargaining power’ is alleged to have ‘carried out a scheme to deliberately  
 21 cheat large numbers of customers out of individually small sums of money.’” *Heckman*, 120 F.4th at 690  
 22 (quoting *Discover Bank*, 36 Cal.4th at 162–63). Neither of these circumstances is present here.

23       First, Plaintiff has not alleged a “scheme” by Coinbase, much less one aimed at nickeling and  
 24 diming consumers out of small sums of money. The prototypical example of such a scheme is one where  
 25 “[a] company … wrongfully exacts a dollar from each of millions of customers.” *Discover Bank*, 36  
 26 Cal.4th at 161 (citation omitted). Coinbase is not alleged to have stolen from Plaintiff at all and the amount  
 27 at issue is not small dollar. Rather, Plaintiff alleges Coinbase failed to prevent a scam by a third party  
 28 that, in his case, allegedly resulted in losses of over \$100,000. (Opp. 1.) As explained in *Discover Bank*,

1 a plaintiff who alleges damages that are quite small (in that case, \$29) is able to effectively remedy the  
 2 harm only through a class action. 36 Cal.4th at 159. That reasoning plainly does not apply in a situation  
 3 like this one, where the plaintiff alleges losses in the six figures. *See Jeong v. Nexo Capital Inc.*, 2023  
 4 WL 2717255, at \*5 (N.D. Cal. Mar. 29, 2023) (“requested damages exceed[ing] \$100,000 … is not a small  
 5 amount of damages under the *Discover Bank* test”); *Arguelles-Romero v. Superior Ct.*, 184 Cal. App.4th  
 6 825, 844 (2010) (rejecting unconscionability challenge under *Discover Bank* because plaintiff, who sought  
 7 \$16,000 in damages, had “failed to establish that the individual amounts at issue are so small that a class  
 8 action is the only viable remedy”).<sup>3</sup> Plaintiff has not pointed to a single case in which a court viewed a  
 9 six-figure damages claim as sufficiently “small” to invoke the unconscionability rule in *Discover Bank*.<sup>4</sup>

10 *Second*, Plaintiff has also not shown that the claims he advances are ones that would predictability  
 11 involve “small damage disputes.” As Plaintiff’s own experience demonstrates, victims of third-party pig-  
 12 butchering schemes can lose significant sums of money. Accordingly, even if smaller losses do occur in  
 13 the pig-butchering context, they are not “predictabl[e]” as they are in the prototypical one-dollar-a-  
 14 million-times consumer case discussed in *Discover Bank*. 36 Cal.4th at 161–62. Plaintiff’s assertion to  
 15 the contrary—based wholly on his contention that Coinbase “exposed users to scams involving average  
 16 losses between \$800 and \$8,000” (Opp. 7)—is both unsupported and speculative. The purported source  
 17 for this information cited in the Complaint (at ¶ 15) says nothing about the average loss for fraud victims,  
 18 and instead discusses only the total losses for different types of fraud. Even assuming Plaintiff’s figures  
 19 are correct, they represent average losses across all consumers in broad categories of “investment” and  
 20 “imposter” fraud. Compl. ¶ 15. They are not specific to cryptocurrency fraud, Coinbase, or the claims

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22 <sup>3</sup> Plaintiff argues that *Massie v. Ralphs Grocery Co.* 2012 WL 1078562, at \*6 (Cal. Ct. App. Apr.  
 23 2, 2012) was a case where the court viewed damages ranging from \$10,000 and \$80,000 as sufficiently  
 24 small for purposes of the unconscionability analysis under *Discover Bank*. (Opp. 8.) But *Massie* did not  
 25 apply *Discover Bank* and instead applied *Gentry v. Superior Court*, 42 Cal.4th 443 (2007), which applies  
 26 to claims under California employment statutes. Notably, although one plaintiff in *Massie* had a claim in  
 27 excess of \$80,000, the court assumed most plaintiffs in the case would be seeking far less: “Adjusting for  
 28 risk, no individual would file a claim necessitating the complex discovery undertaken in an overtime case  
 such as these in the hope of obtaining \$30,000.” 2012 WL 1078562, at \*6.

<sup>4</sup> *Independent Association of Mailbox Center Owners, Inc. v. Superior Court*, 133 Cal. App.4th 396 (2005) (Opp. 8), does not help Plaintiff. The court there merely concluded that the plaintiffs’ claims had “common issues of law and fact” amenable to class arbitration and did not address whether the amount of damages was low enough to qualify under the *Discover Bank* rule. *Id.* at 408–11.

1 asserted in this case. This apples-to-oranges comparison reveals nothing about the expected losses of any  
 2 given Coinbase user for the type of scam at issue here.

3 Finally, if Plaintiff's inability to satisfy either of the *Discover Bank* conditions were not enough,  
 4 that case is inapplicable here for an additional reason: While the arbitration agreement in *Discover Bank*  
 5 prohibited "consolidating claims" as well as class and representative actions, 36 Cal.4th at 153, the User  
 6 Agreement includes a batch provision ensuring that even small dollar claims can be litigated efficiently  
 7 and inexpensively in consolidated proceedings. Not only does Coinbase pay all arbitration fees after the  
 8 initial filing fee, but in batch arbitration, Coinbase and 100 claimants agree (i) to "single filing and  
 9 administrative fees for batches of Requests," and (ii) to work together on "steps to minimize the time and  
 10 costs of arbitration." Nacoste Decl. Ex. 5, App'x 5, § 1.8. Thus, unlike in *Discover Bank*, the User  
 11 Agreement's class action waiver does not, in any sense, operate as an exculpatory clause.

12 **B. Plaintiff's Other Unconscionability Arguments Also Fail**

13 Plaintiff alternatively contends that even if the class waiver is not unconscionable under *Heckman*  
 14 and *Discover Bank*, the batch provision (and other changes made to the 2022 User Agreement) render the  
 15 delegation clause unconscionable and distinguish this case from *Bielski*.<sup>5</sup> (Opp. 9.) Plaintiff's attempt to  
 16 avoid *Bielski* on the ground that it involved an earlier version of the User Agreement should be rejected,  
 17 as none of the differences between the two agreements is material to the unconscionability inquiry.

18 **1. There is No Procedural Unconscionability**

19 Plaintiff asserts three grounds for finding procedural unconscionability. None has merit.

20 *First*, Plaintiff asserts that the User Agreement's delegation provision is a contract of adhesion.  
 21 (Opp. 10.) But that does not render the arbitration agreement unenforceable. The Ninth Circuit in *Bielski*  
 22 and this Court in *Kamath v. Coinbase, Inc.* each held the delegation provision enforceable *despite*  
 23 concluding that it was a contract of adhesion. *See Bielski*, 87 F.4th at 1014; *Kamath*, 2024 WL 950163,  
 24 at \*8 (N.D. Cal. Mar. 5, 2024) (Breyer, J.).

25

26 <sup>5</sup> To the extent Plaintiff purports to challenge the unconscionability of these provisions as part of  
 27 a broader attack on the enforceability of the arbitration agreement, *see* Opp. 9, such a challenge is  
 reserved for the arbitrator under the User Agreement's delegation clause.

1       Second, Plaintiff contends that the User Agreement’s delegation provision presents surprise  
 2 because it is “buried” in a “prolix” and “densely worded” form, and unlike in the version at issue in *Bielski*,  
 3 is set out in an appendix towards the end of the Agreement. (Opp. 10.) This argument ignores the clear  
 4 and plain language *written in bold text on the very first page* of the User Agreement notifying customers  
 5 that Appendix 5 “includes an agreement to arbitrate which requires … that *all disputes* between you and  
 6 us shall be resolved by binding and final arbitration.” User Agreement p. 1. As in *Bielski*, therefore,  
 7 “there is no argument that the [dispute resolution] process is hidden in the User Agreement” because it is  
 8 “clearly presented,” “written in plain language,” and written “in a legible-sized font.” 87 F.4th at 1014.

9       Third, Plaintiff complains that the delegation provision “itself is anything but clear” (Opp. 10–11),  
 10 noting the delegation provision in the 2022 User Agreement carves out parts of the arbitrator’s jurisdiction,  
 11 which Plaintiff characterizes as “a single 14-line sentence riddled with exceptions [and] cross-references  
 12 to other contract sections.” (Opp. 10). But the Ninth Circuit in *Bielski* considered the same core language  
 13 and declined to find procedural unconscionability. 87 F.4th at 1012–14. Indeed, no fewer than four courts  
 14 have upheld the enforceability of the same delegation provision in the 2022 User Agreement. *See Kamath*,  
 15 2024 WL 950163, at \*8–9; *Aggarwal v. Coinbase, Inc.*, 685 F. Supp. 3d 867, 882 (N.D. Cal. 2023); *Pearl*  
 16 *v. Coinbase Global, Inc.*, 2023 WL 1769190, at \*6–7 (N.D. Cal. Feb. 3, 2023); *Donovan v. Coinbase*  
 17 *Global, Inc.*, 2023 WL 2124776, \*3–5 (N.D. Cal. Jan. 6, 2023). *Aggarwal*, in particular, dismissed a  
 18 similar criticism that the delegation provision is “unfairly surprising” because users had to “cross-  
 19 reference other sections earlier in the User Agreement to ascertain its meaning.” 685 F. Supp. 3d at 881.

20       **2. There is No Substantive Unconscionability**

21       Plaintiff’s substantive unconscionability arguments are likewise unavailing. As an initial matter,  
 22 none of these arguments focus on the text of the delegation provision and instead target other provisions  
 23 in the arbitration agreement. To prevail on such a substantive unconscionability argument, Plaintiff must  
 24 “explain how” the provisions complained of, “which [are] outside the Delegation Clause, ‘make[] the fact  
 25 of an arbitrator deciding arbitrability unconscionable.’” *Kohler v. Whaleco, Inc.*, 757 F. Supp. 3d 1112,  
 26 1129 (S.D. Cal. 2024) (quoting *Holley-Gallegly*, 74 F.4th at 1002). Plaintiff has not done so. Remarkably,  
 27 Plaintiff fails to make *any* effort to connect two out of his three substantive unconscionability arguments  
 28 to the delegation clause.

1 On the merits, Plaintiff acknowledges, as he must, that *Bielski* already rejected a substantive  
 2 unconscionability challenge to Coinbase's delegation clause. (Opp. 11.) Plaintiff nonetheless asserts that  
 3 he raises "several grounds not considered in *Bielski*" based on the 2022 version of the User Agreement in  
 4 place here. (Opp. 11.) Yet the only substantive difference between the version of the User Agreement  
 5 here and in *Bielski* to which Plaintiff points is the addition of the batch arbitration provision discussed  
 6 above. All the courts that have considered a substantive unconscionability challenge to the delegation  
 7 clause in the 2022 User Agreement have upheld it. *See Kamath*, 2024 WL 950163, at \*6; *Aggarwal*, 685  
 8 F. Supp. 3d at 880–82; *Pearl*, 2023 WL 1769190, at \*6–7; *Donovan*, 2023 WL 2124776, at \*3–5. Indeed,  
 9 this Court expressly held in *Kamath* that the delegation provision in the 2022 User Agreement "is not  
 10 substantively unconscionable" and therefore "is valid and enforceable." 2024 WL 950163, at \*6. The  
 11 same result is required here, for at least three reasons.

12 *First*, Plaintiff likens the batch arbitration provision to the one in *Heckman*, and asserts that it  
 13 renders the delegation provision unconscionable because it results in a deprivation of due process. (Opp.  
 14 11–13.) But as discussed above, the *Heckman* mass arbitration regime is far afield from the one  
 15 contemplated by the User Agreement. The rules of the arbitral forum incorporated into the *Heckman*  
 16 arbitration agreement provided that early merits decisions in mass arbitrations would constitute binding  
 17 precedent in later arbitrations involving other claimants. 120 F.4th at 684. The Ninth Circuit held that  
 18 these rules violated "basic principles of due process" because later claimants had no opportunity to  
 19 participate in those earlier proceedings and would "not even know the decision[s]" in those proceedings.  
 20 *Id.* The batch provision here, in contrast, involves no bellwethers, no limitations on each individual  
 21 claimant's ability to participate in the consolidated process, and no binding of claimants by rulings on  
 22 proceedings in which they did not participate. *See supra* at 5.

23 The Ninth Circuit in *Jones* drew a similar contrast between the mass arbitration protocol in  
 24 *Heckman* and an arbitral provision like Coinbase's that permitted consolidated treatment of arbitrations.  
 25 129 F.4th at 1182. The court observed that the *Heckman* protocol was substantively unconscionable based  
 26 on its "use of bellwether cases," the result of which was that "[c]laimants in non-bellwether cases had no  
 27 right to participate in bellwether cases, no access to the bellwether decision until it was invoked against  
 28 them, no notice of the bellwether cases, no opportunity to be heard, and no right to opt out of the batch."

1 *Id.* The consolidation permitted by the *Jones* agreement “implicate[d] none of those concerns,” and “no  
 2 claimant [was] at the mercy of another claimant’s representation of her.” *Id.* Other courts have  
 3 distinguished *Heckman* on a similar ground in rejecting unconscionability challenges to batch provisions.  
 4 See *Kohler*, 757 F. Supp. 3d at 1128 (distinguishing *Heckman* based on absence of bellwethers in batch  
 5 protocol); *Pilon v. Discovery Commc’ns, LLC*, 769 F. Supp. 3d 273, 298 (S.D.N.Y. 2025) (same).

6 Plaintiff raises additional due process arguments based on his misreading of the AAA Mass  
 7 Arbitration Supplementary Rules. Plaintiff argues that those rules permit the process arbitrator to rule that  
 8 a decision as to the enforceability of a delegation clause may apply to “future claimants.” (Opp. 12.) That  
 9 is incorrect for the reasons set forth above: future claimants are not bound by prior decisions of a process  
 10 arbitrator. See *supra* at 5. The court in *Pandolfi v. AviaGames Inc.* agreed, noting that “nothing in the  
 11 AAA Supplementary Rules suggests that the Process Arbitrator has a role in deciding matters beyond  
 12 those that are administrative or ministerial in nature, and the issues of arbitrability are clearly more  
 13 consequential in nature.” 2024 WL 4051754, at \*8 (N.D. Cal. Sept. 4, 2024). Plaintiff fails to provide  
 14 authority supporting the unconscionability of the AAA mass arbitration rules. To the contrary, courts  
 15 have observed that those rules ensure fairness and due process. See *MacClelland v. Cellco P’ship*, 609 F.  
 16 Supp. 3d 1024, 1043–44 (N.D. Cal. 2022) (noting that 2021 version of AAA mass arbitration rules stood  
 17 “in stark contrast” to defendant’s unconscionable protocol that featured bellwether proceedings).

18 *Second*, Plaintiff contends the arbitration agreement is “illusory” because it gives Coinbase  
 19 “unilateral power to nullify it,” and points to Rule MA-10(d)-(e) in the AAA Mass Arbitration  
 20 Supplementary Rules that he says allow Coinbase to “terminate the proceeding altogether” by withholding  
 21 payment of the arbitration fee. (Opp. 13.) Plaintiff appears concerned about a situation where an  
 22 individual initiates arbitration but Coinbase refuses to pay the arbitration fee. Plaintiff claims Coinbase  
 23 took such action in connection with *Bernstein v. Coinbase Global Inc.*, No. 1:25-cv-5313, ECF 1 ¶¶ 51–  
 24 61 (N.D. Ill. May 13, 2025) (Opp. 14.) Plaintiff’s argument is meritless for multiple reasons.

25 Plaintiff’s argument is not well-taken given that he *opposes* arbitration of this dispute. As Plaintiff  
 26 concedes (Opp. 13), were Coinbase to resist arbitration for any reason, Plaintiff would be free to pursue  
 27 his claims in court—just as Plaintiff is seeking to do here. Indeed, in *Bernstein v. Coinbase Global, Inc.*,  
 28 1:25-cv-5313 (N.D. Ill.), a case Plaintiff points to as evidence of Coinbase’s “unilateral power” to

1 terminate arbitration (Opp. 14), the plaintiff initiated a class action in federal court after arbitration  
 2 proceedings stalled. *Bernstein*, 1:25-cv-5313, ECF 1 ¶¶ 62–66.

3 In any event, Plaintiff is incorrect that the challenged provisions in the AAA Mass Arbitration  
 4 Supplementary Rules render the User Agreement’s arbitration provision unenforceable. The rule in  
 5 question—MA10(d)-(e)—is a basic, noncontroversial rule that applies to both parties equally and merely  
 6 notes that if a party fails to pay the arbitration fee, the arbitration cannot go forward. This is in no way  
 7 unique to the mass arbitration context. *See* AAA Consumer Arbitration R. 56(d) (granting arbitrator  
 8 authority to terminate proceedings for nonpayment of fees). Unsurprisingly, then Plaintiff fails to cite any  
 9 authority finding this rule to be unconscionable.<sup>6</sup>

10 To the contrary, as the Seventh Circuit recently explained, parties may “bargain[] for the AAA’s  
 11 discretion over the payment of administrative filing fees, including the consequences that would stem  
 12 from a party’s refusal to pay those fees.” *Wallrich v. Samsung Elecs. Am., Inc.*, 106 F.4th 609, 620 (7th  
 13 Cir. 2024). There, the business—Samsung—declined to pay AAA filing fees. But the AAA rules  
 14 provided the ground rules for that precise scenario:

15 After Samsung refused to pay its fees, the AAA, in line with its rules (which it applies in  
 16 its discretion), allowed the consumers to advance Samsung’s fees. If the consumers had  
 17 advanced the fees, Samsung would have arbitrated the merits of the consumers’ claims.  
 18 However, the consumers declined. The AAA then could have stayed the arbitration, as  
 requested by the consumers, but it chose not to. Instead, it terminated the proceedings,  
 opening the door for the consumers to pursue their claims in district court.

19 *Id.* at 620. The court enforced those rules and declined the claimants’ attempt to force Samsung to pay  
 20 arbitration fees. The Ninth Circuit came to the same conclusion in *Lifescan, Inc. v. Premier Diabetic  
 21 Services, Inc.*, 363 F.3d 1010 (9th Cir. 2004). There, the court reversed the grant of a petition to compel  
 22 where the business declined to pay its share of the AAA filings fees and the AAA suspended the  
 23 arbitrations. The court explained that arbitrators may “exercise[] their discretion … by allowing the  
 24 arbitration to proceed on the condition that [the claimant] advance the remaining fees.” *Id.* at 1012–13.

25  
 26 <sup>6</sup> The arbitration agreements in the cases Plaintiff cites (at Opp. 13)—*Ingle v. Circuit City Stores, Inc.*, 328 F.3d 1165, 1179 (9th Cir. 2003), *Brashear v. Halliburton Energy Services, Inc.*, 2020 WL 4596116, at \*14 (E.D. Cal. Aug. 11, 2020)—do not address the type of provision challenged here. Instead,  
 27 those cases involved a provision that allowed the defendant to unilaterally amend or terminate the  
 28 arbitration agreement—a provision materially distinct from the one challenged here.

1 Just as in *Wallrich* and *Lifescan*, the claimants in *Bernstein* could have continued the arbitration by  
 2 “pay[ing] the fees that Coinbase owed,” and thus Coinbase did not have the ultimate say as to whether the  
 3 arbitration continued. *Bernstein*, 1:25-cv-5313, ECF 1 ¶ 58. The terms of the agreement are therefore  
 4 not “unfairly one-sided,” as required for substantive unconscionability. *Bielski*, 87 F.4th at 1014.

5 *Third*, Plaintiff complains that the arbitration agreement has a one-sided attorney’s fee provision—  
 6 a provision that existed in the version of the User Agreement deemed enforceable in *Bielski*. (Opp. 14.)  
 7 But that provision is expressly bilateral, and thus is not unfair to Plaintiff. The case Plaintiff cites in  
 8 support—*Ramirez v. Charter Communications, Inc.*—found a *nonmutual* attorney’s fee provision  
 9 unconscionable under a specific employment statute’s “asymmetric rule” that existed to “promote  
 10 vigorous enforcement of … civil rights laws.” 16 Cal.5th 478, 508 (2024) (citation omitted). No such  
 11 thumb on the scale in favor of plaintiffs exists in the ordinary case. California law is clear that “the  
 12 standard for substantive unconscionability—the requisite degree of unfairness beyond merely a bad  
 13 bargain—must be as rigorous and demanding for arbitration clauses as for any contract clause.” *Sanchez*  
 14 *v. Valencia Holding Co.*, 61 Cal.4th 899, 912 (2015). Consistent with that principle, California courts  
 15 routinely enforce attorney fee provisions in arbitration agreements. *E.g., Acosta v. Kerrigan*, 150 Cal.  
 16 App.4th 1124, 1132 (2007); *DiMarco v. Chaney*, 31 Cal. App.4th 1809, 1815 (1995). The fee provision  
 17 here is no different, and does not render the delegation clause unconscionable.<sup>7</sup>

### 18 III. CONCLUSION

19 For the reasons stated above, Coinbase respectfully requests that this Court grant its motion to: (1)  
 20 compel Plaintiff to arbitrate his claims against it; and (2) stay all proceedings.

21  
 22 <sup>7</sup> Contrary to Plaintiff’s contention (Opp. 15), the arbitration agreement is properly severable were  
 23 the Court find any provision therein to be unconscionable (which it should not). *See Nacoste Decl. Ex. 5,*  
 24 *App’x 5, § 9.3* (requiring severance “[i]f any provision of this Agreement shall be determined to be invalid  
 25 or unenforceable”). California courts favor severing unconscionable provisions of an arbitration  
 26 agreement when “the central purpose of the contract” is not “tainted with illegality.” *Little v. Auto Stiegler,*  
 27 *Inc.*, 29 Cal.4th 1064, 1074 (2003) (severing under these circumstances). Here, as in *Little*, the assertedly  
 28 unconscionable provisions, including the class waiver and batch arbitration provisions, are “collateral” to  
 the contract’s main purpose, as they do not prevent Plaintiff from fairly arbitrating his claims with  
 Coinbase. *Id.* The fundamental differences between the batch provision here versus in *Heckman*  
 undermine Plaintiff’s argument that the agreement is “permeated with unconscionability and cannot be  
 salvaged through severance.” (Opp. 15.)

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2

CONRAD | METLITZKY | KANE LLP

3 /s/ Gabriela Kipnis  
4 Gabriela Kipnis

5 CONRAD | METLITZKY | KANE LLP  
6 217 Leidesdorff Street  
7 San Francisco, CA 94111  
415.343.7100  
415.343.7101

8 Joseph M. Terry (*pro hac vice*)  
9 John McNichols (*pro hac vice*)  
Jesse T. Smallwood (*pro hac vice*)

10 WILLIAMS & CONNOLLY LLP  
11 680 Maine Avenue, SW  
12 Washington, DC 20024  
(202) 434-5000 / office  
(202) 434-5029 / fax

13 *Counsel for Defendants Coinbase Global, Inc.,*  
14 *Coinbase, Inc., and Coinbase Bermuda Services,*  
*Ltd.*